

**ASSEMBLY BILL**

**No. 646**

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**Introduced by Assembly Member Atkins**

February 16, 2011

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An act to amend Sections 3505 and 3505.2 of, to add Section 3505.5 to, and to repeal and add Section 3505.4 of, the Government Code, relating to local public employee organizations.

LEGISLATIVE COUNSEL'S DIGEST

AB 646, as introduced, Atkins. Local public employee organizations: impasse procedures.

The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach an impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer.

This bill would delete the authorization for the public agency to implement its last, best, and final offer in the event of an impasse. The bill would instead provide that if the parties fail to reach an agreement, either party may request that the board appoint a mediator, and would

require the board, if it determines that an impasse exists, to appoint a mediator at the board's expense.

The bill would authorize either party to request that the matter be submitted to a factfinding panel if the mediator is unable to effect settlement of the controversy within 15 days and declares that factfinding is appropriate. The bill would require that the factfinding panel consist of one member selected by each party as well as a chairperson selected by the board or by agreement of the parties. The factfinding panel would be authorized to make investigations and hold hearings, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The bill would require all political subdivisions of the state to comply with the panel's requests for information.

This bill would require, if the dispute is not settled within 30 days, the factfinding panel to make findings of fact and recommend terms of settlement, for advisory purposes only. The bill would require that these findings and recommendations be first issued to the parties, but would require the public agency to make them publicly available within 10 days after their receipt. The bill would provide for the distribution of costs associated with the factfinding panel, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3505 of the Government Code is amended  
2     to read:  
3     3505. The governing body of a public agency, or such boards,  
4     commissions, administrative officers or other representatives as  
5     may be properly designated by law or by such governing body,  
6     shall meet and confer in good faith regarding wages, hours, and  
7     other terms and conditions of employment with representatives of  
8     such recognized employee organizations, as defined in subdivision  
9     (b) of Section 3501, and shall consider fully such presentations as  
10    are made by the employee organization on behalf of its members  
11    prior to arriving at a determination of policy or course of action.  
12    “Meet and confer in good faith” means that a public agency, or  
13    such representatives as it may designate, and representatives of  
14    recognized employee organizations, shall have the mutual  
15    obligation personally to meet and confer promptly upon request  
16    by either party and continue for a reasonable period of time in

1 order to exchange freely information, opinions, and proposals, and  
2 to endeavor to reach agreement on matters within the scope of  
3 representation prior to the adoption by the public agency of its  
4 final budget for the ensuing year. ~~The process should include~~  
5 ~~adequate time for the resolution of impasses where specific~~  
6 ~~procedures for such resolution are contained in local rule,~~  
7 ~~regulation, or ordinance, or when such procedures are utilized by~~  
8 ~~mutual consent.~~

9 SEC. 2. Section 3505.2 of the Government Code is amended  
10 to read:

11 3505.2. (a) If after a reasonable period of time, representatives  
12 of the public agency and the recognized employee organization  
13 fail to reach agreement, the public agency and the recognized  
14 employee organization or recognized employee organizations  
15 ~~together may agree do one of the following:~~

16 (1) *The parties may agree upon the appointment of a mediator*  
17 *mutually agreeable to the parties. ~~Costs, in which case, the costs~~*  
18 *of mediation shall be divided one-half to the public agency and*  
19 *one-half to the recognized employee organization or recognized*  
20 *employee organizations.*

21 (2) *Either party may request that the Public Employment*  
22 *Relations Board appoint a mediator for the purpose of assisting*  
23 *them in reconciling their differences and resolving the controversy*  
24 *on terms that are mutually acceptable. If the board determines*  
25 *that an impasse exists, it shall appoint a mediator within five*  
26 *working days after its receipt of the request. The mediator shall*  
27 *meet with the parties or their representatives, either jointly or*  
28 *separately, as soon as practicable, and shall take any other steps*  
29 *he or she deems appropriate in order to persuade the parties to*  
30 *resolve their differences and reach a mutually acceptable*  
31 *agreement. The services of the mediator, including any per diem*  
32 *fees, and actual and necessary travel and subsistence expenses,*  
33 *shall be provided by the board without cost to the parties.*

34 (b) *If the parties agree upon the appointment of a mediator*  
35 *pursuant to paragraph (1) of subdivision (a), the board shall not*  
36 *appoint its own mediator unless failure to do so would be*  
37 *inconsistent with the policies of this chapter.*

38 SEC. 3. Section 3505.4 of the Government Code is repealed.

39 ~~3505.4. If after meeting and conferring in good faith, an~~  
40 ~~impasse has been reached between the public agency and the~~

1 ~~recognized employee organization, and impasse procedures, where~~  
2 ~~applicable, have been exhausted, a public agency that is not~~  
3 ~~required to proceed to interest arbitration may implement its last,~~  
4 ~~best, and final offer, but shall not implement a memorandum of~~  
5 ~~understanding. The unilateral implementation of a public agency's~~  
6 ~~last, best, and final offer shall not deprive a recognized employee~~  
7 ~~organization of the right each year to meet and confer on matters~~  
8 ~~within the scope of representation, whether or not those matters~~  
9 ~~are included in the unilateral implementation, prior to the adoption~~  
10 ~~by the public agency of its annual budget, or as otherwise required~~  
11 ~~by law.~~

12 SEC. 4. Section 3505.4 is added to the Government Code, to  
13 read:

14 3505.4. (a) If the mediator is unable to effect settlement of the  
15 controversy within 15 days after his or her appointment pursuant  
16 to Section 3505.2, and the mediator declares that factfinding is  
17 appropriate to the resolution of the impasse, either party may, by  
18 written notification to the other party, request that their differences  
19 be submitted to a factfinding panel. Within five days after receipt  
20 of the written request, each party shall select a person to serve as  
21 its member of the factfinding panel. The Public Employment  
22 Relations Board shall, within five days after the selection of panel  
23 members by the parties, select a chairperson of the factfinding  
24 panel. The chairperson designated by the board shall not, without  
25 the consent of both parties, be the same person who served as  
26 mediator pursuant to Section 3505.2.

27 (b) Within five days after the board selects a chairperson of the  
28 factfinding panel, the parties may mutually agree upon a person  
29 to serve as chairperson in lieu of the person selected by the board.

30 (c) The panel shall, within 10 days after its appointment, meet  
31 with the parties or their representatives, either jointly or separately,  
32 and may make inquiries and investigations, hold hearings, and  
33 take any other steps it deems appropriate. For the purpose of the  
34 hearings, investigations, and inquiries, the panel shall have the  
35 power to issue subpoenas requiring the attendance and testimony  
36 of witnesses and the production of evidence. Any state agency, as  
37 defined in Section 11000, the California State University, or any  
38 political subdivision of the state, including any board of education,  
39 shall furnish the panel, upon its request, with all records, papers,

1 and information in their possession relating to any matter under  
2 investigation by or in issue before the panel.

3 (d) If the dispute is not settled within 30 days after the  
4 appointment of the factfinding panel, or, upon agreement by both  
5 parties within a longer period, the panel shall make findings of  
6 fact and recommend terms of settlement. These findings and  
7 recommendations shall be advisory only. In arriving at their  
8 findings and recommendations, the fact finders shall consider,  
9 weigh, and be guided by all the following criteria:

10 (1) State and federal laws that are applicable to the employer.

11 (2) Local rules, regulations, or ordinances.

12 (3) Stipulations of the parties.

13 (4) The interests and welfare of the public and the financial  
14 ability of the public agency.

15 (5) Comparison of the wages, hours, and conditions of  
16 employment of the employees involved in the factfinding  
17 proceeding with the wages, hours, and conditions of employment  
18 of other employees performing similar services in comparable  
19 public agencies.

20 (6) The consumer price index for goods and services, commonly  
21 known as the cost of living.

22 (7) The overall compensation presently received by the  
23 employees, including direct wage compensation, vacations,  
24 holidays, and other excused time, insurance and pensions, medical  
25 and hospitalization benefits, the continuity and stability of  
26 employment, and all other benefits received.

27 (8) Any other facts, not confined to those specified in paragraphs  
28 (1) to (7), inclusive, which are normally or traditionally taken into  
29 consideration in making the findings and recommendations.

30 (e) The fact finders shall submit, in writing, any findings of fact  
31 and recommended terms of settlement to the parties before they  
32 are made available to the public. The public agency shall make  
33 these findings and recommendations publicly available within 10  
34 days after their receipt.

35 (f) The costs for the services of the panel chairperson selected  
36 by the board, including per diem fees, if any, and actual and  
37 necessary travel and subsistence expenses, shall be borne by the  
38 board.

39 (g) The costs for the services of the panel chairperson agreed  
40 upon by the parties shall be equally divided between the parties,

1 and shall include per diem fees, if any, and actual and necessary  
2 travel and subsistence expenses. The per diem fees shall not exceed  
3 the per diem fees stated on the chairperson's resume on file with  
4 the board. The chairperson's bill showing the amount payable by  
5 the parties shall accompany his or her final report to the parties  
6 and the board. The chairperson may submit interim bills to the  
7 parties in the course of the proceedings, and copies of the interim  
8 bills shall also be sent to the board. The parties shall make payment  
9 directly to the chairperson.

10 (h) Any other mutually incurred costs shall be borne equally by  
11 the public agency and the employee organization. Any separately  
12 incurred costs for the panel member selected by each party shall  
13 be borne by that party.

14 SEC. 5. Section 3505.5 is added to the Government Code, to  
15 read:

16 3505.5. Nothing in this article shall be construed to prohibit  
17 the mediator appointed pursuant to Section 3505.2 from continuing  
18 mediation efforts on the basis of the findings of fact and  
19 recommended terms of settlement made pursuant to Section 3505.4.